Utah's Aggravated Murder Statute

Current Law, Context, and Criticisms

OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

Presentation to Criminal Code Evaluation Task Force September 24, 2018

Outline

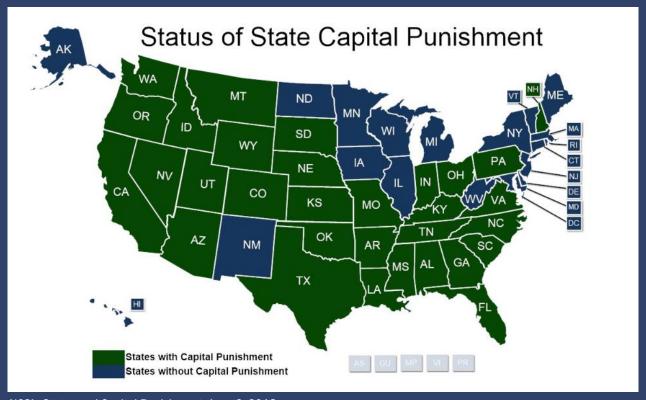
- Statistical Overview of the Death Penalty
- Background
- Utah Statute
- Aggravating Factors in the States
- Questions and Criticism



Statistical Overview

Capital punishment is currently authorized in 31 states.

- States that recently abolished the death penalty include:
 - New Mexico (2009)
 - Illinois (2011)
 - Connecticut (2012)
 - Maryland (2013)



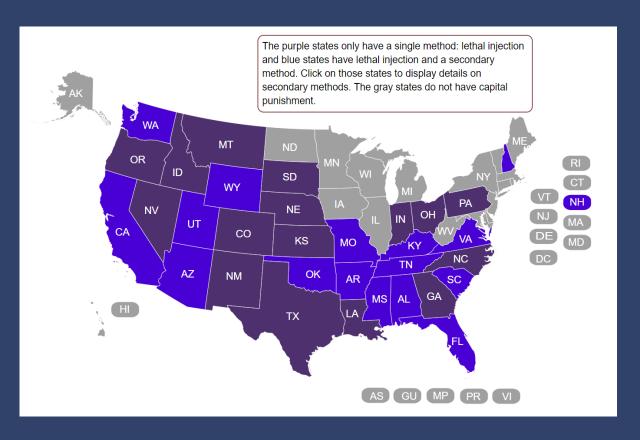
NCSL: States and Capital Punishment, June 6, 2018



Statistical Overview

Legal Challenges to Capital Punishment

- Cruel and unusual punishment?
 - 16 states, including Utah, have a secondary method of execution.
- Cost
- Aggravating factors



Background

- Furman v. Georgia, 408 U.S. 238 (1972)
 - The death penalty was being <u>arbitrarily and inconsistently</u> applied in violation of the Eighth and Fourteenth Amendments.
- Gregg v. Georgia, 428 U.S. 153 (1976)
 - Aggravating factors help "narrowly define" those cases where the death penalty may be applied.
- Zant v. Stephens, 462 U.S. 862 (1983)
 - Statutory aggravating factors must "genuinely narrow the class of persons eligible for the death penalty"

Utah Statute

General Process

- 1) Charge of aggravated murder
- 2) Notice to seek the death penalty filed within 60 days of arraignment
- 3) Guilty verdict
- 4) Sentencing proceedings
 - "Total aggravation outweighs total mitigation"

Utah Statute

Mitigating Factors

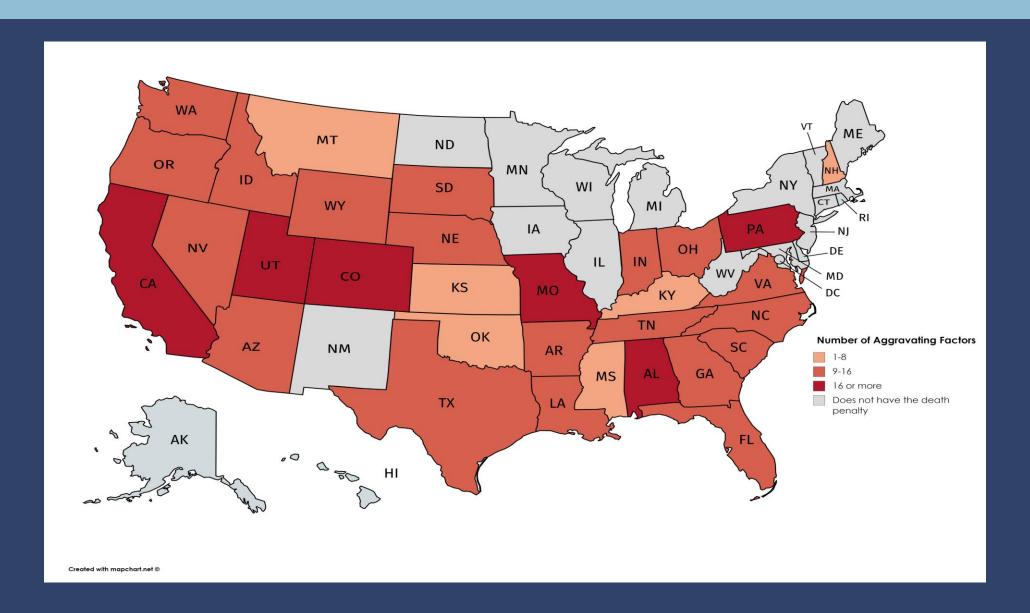
- Lack of criminal history
- Mental or emotional disturbance
- Duress
- Capacity
- Age
- Minor role in the offense
- Any other fact of mitigation

Utah Statute

Aggravating Factors

- Aggravating circumstances are considered at sentencing.
- There are approximately 19 statutory aggravating factors, including:
 - the homicide was committed by an individual confined in a jail or correctional institution;
 - the homicide was committed for pecuniary gain;
 - the homicide was committed for the purpose of avoiding or preventing an arrest
 - in an "especially heinous, atrocious, cruel, or exceptionally depraved manner" demonstrated by physical torture or serious physical abuse or bodily injury.
- CCJJ reported over 60 circumstances may qualify for the death penalty.

Aggravating Factors in the States



Aggravating Factors in the States

- States have continued to expand the number and application of aggravating factors.
- Common aggravating examples include:
 - defendant has previous convictions;
 - homicide occurred during commission of any of a list of violent crimes;
 - victim was a peace officer;
 - homicide involved was particularly heinous or involved torture;
 - defendant poisoned the victim.

Statistical Overview

States with the highest number of prisoners under sentence of death:

- California (742)
- Florida (382)
- Texas (244)

Utah

- Currently 9 on death row (24th)
- The last execution was in 2010



Questions and Criticism

When a statute includes many aggravating factors does it effectively mean there are no aggravating factors? Does this result in arbitrary application in violation of *Furman*?



OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL